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CLERK U.S. BANKRUPTCY COURT  
Central District of California  
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**NOT FOR PUBLICATION**

**UNITED STATES BANKRUPTCY COURT**

**CENTRAL DISTRICT OF CALIFORNIA**

**LOS ANGELES DIVISION**

In re:

RUBY SIDDIQUI, M.D.,

Debtor.

Case No. 2:14-bk-19653 RK

Chapter 7

Adv. No. 2:14-ap-01549 RK

CHRISTINE KELLEY,

Plaintiff,

vs.

RUBY SIDDIQUI, M.D.,

Defendant.

**FINDINGS OF FACT AND  
CONCLUSIONS OF LAW ON  
PLAINTIFF'S ADVERSARY COMPLAINT  
FOR NON-DISCHARGEABILITY OF  
DEBT PURSUANT TO 11 U.S.C. §  
523(a)(6) AND DENIAL OF DISCHARGE  
PURSUANT TO 11 U.S.C. §§ 727(a)(2),  
(a)(3), (a)(4) AND (a)(5)**

The above-captioned adversary proceeding on the adversary complaint of Plaintiff Christine Kelley ("Plaintiff") asserting claims for non-dischargeability of debt pursuant to 11 U.S.C. § 523(a)(6) and for denial of discharge of Defendant Ruby Siddiqui, M.D. ("Defendant"), Debtor, pursuant to 11 U.S.C. § 727(a)(2), (a)(3), (a)(4) and (a)(5) came on for trial before the undersigned United States Bankruptcy Judge on April 21, 2016. Sheila Esmaili, of the Law Offices of Michael Jay Berger, appeared for Plaintiff. No appearance was made for Defendant.

1 At trial, the court received Plaintiff's Trial Exhibits P-1 through P-62, including  
2 Plaintiff's trial declaration, Electronic Case Filing Number ("ECF") 26, filed on December  
3 2, 2015 and offered as Plaintiff's Trial Exhibit P-62, into evidence. *Audio Recording of*  
4 *Trial*, April 21, 2016 at 9:32-9:34 a.m. However, the court did not receive into evidence  
5 the Supplemental Declaration of Plaintiff Christine Kelley, ECF 43, filed on April 20, 2016  
6 (due on March 31, 2016), and Plaintiff Christine Kelley's Evidentiary Objections to  
7 Defendant Ruby Siddiqui, M.D.'s Trial Declaration, ECF 44, filed on April 20, 2016 (due  
8 on April 14, 2016), which were stricken because they were late-filed in violation of the  
9 deadlines set forth in the court's Scheduling Order and Order Approving Amended Joint  
10 Pretrial Stipulation, ECF 38, filed on February 12, 2016. *See Audio Recording of Trial*,  
11 April 21, 2016 at 9:02-9:05 a.m. Moreover, the court did not receive Defendant's Trial  
12 Declaration, ECF 29, filed on January 4, 2016, into evidence as no party offered it into  
13 evidence. *See Audio Recording of Trial*, April 21, 2016 at 9:01-9:05 a.m. and 9:31-9:42  
14 a.m.

15 After trial, on May 31, 2016, Plaintiff lodged her Proposed Findings of Fact and  
16 Conclusions of Law. ECF 51. On August 22, 2016, Defendant lodged objections to  
17 Plaintiff's Proposed Findings of Fact and Conclusions of Law and Counter-Proposed  
18 Findings of Fact and Conclusions of Law, which were submitted by her counsel, Michael  
19 F. Chekian, of Chekian Law Office, Inc. ECF 53. On September 1, 2016, Plaintiff filed  
20 her Motion to Strike Defendant Ruby Siddiqui's Untimely Objections and Counter-  
21 Proposed Findings of Fact and Conclusions of Law Following Trial. ECF 54. On  
22 September 13, 2016, Defendant, by her attorney, Mr. Chekian, filed a reply to the motion  
23 to strike. ECF 56. Afterwards, the court took these matters under submission.

24 Having considered the witness testimony and exhibits received at trial (which  
25 included three ring binders of exhibits totaling 1,400 Bates stamped pages of documents,  
26 most of which were not referred to, let alone discussed, by Plaintiff in her proposed  
27 findings of fact and conclusions of law), and the other matters in evidence, the court  
28

1 hereby makes the following findings of fact and conclusions of law pursuant to Rule 7052  
2 of the Federal Rules of Bankruptcy Procedure and Rule 52 of the Federal Rules of Civil  
3 Procedure.<sup>1</sup>

4 **FINDINGS OF FACT**

5 Findings of Fact 1 through 40 are undisputed facts that were established through  
6 the Amended Pre-Trial Stipulation, ECF 36, filed on February 1, 2016, which the parties  
7 jointly filed and which the court approved through its Scheduling Order and Order  
8 Approving Amended Joint Pretrial Stipulation, ECF 38, filed and entered on February 12,  
9 2016:

10 1. Jurisdiction of this adversary proceeding is conferred on this Court by 28 U.S.C.  
11 §§ 157 and 1334, and Federal Rules of Bankruptcy Procedure[ ] 5005, 7001(6), and  
12 7002.

13 2. This is a Core Proceeding pursuant to 28 U.S.C. § 157(b)(2)(I). This Complaint  
14 is brought pursuant to 11 U.S.C. § 523(a)(6) and § 727(a)(2), (a)(3), (a)(4), (a)(5) and  
15 Federal Rule of Bankruptcy Procedure 7001.

16 3. On May 16, 2014, Defendant filed a voluntary Chapter 7 bankruptcy petition,  
17 Case Number 2:14-bk-19653.

18 4. On August 19, 2014, Plaintiff initiated the Instant Adversary Proceeding, case  
19 no. 2:14-ap-01549, requesting an exception to discharge under Bankruptcy Code §  
20 523(a)(6), and a denial of discharge under Bankruptcy Code § 727(a)(2), (a)(3), (a)(4),  
21 and (a)(5)

22 5. Defendant was a physician licensed by the Medical Board of California.  
23 Defendant held herself out as possessing that degree of care, skill, ability, training and  
24 learning common to psychiatrists who practice in the community.

25  
26 \_\_\_\_\_  
27 <sup>1</sup> Any findings of fact that should be properly characterized as conclusions of law will be  
28 considered as such, and any conclusions of law that should be properly characterized as findings  
of fact will be considered as such.

1 6. In or around September 2007, Plaintiff consulted with Defendant for the purpose  
2 of obtaining psychiatric treatment because Plaintiff was dealing with relationship issues  
3 and anxiety.

4 7. Plaintiff began intense psychiatric treatment with Defendant, which included  
5 psychotherapy in Defendant's office, psychotherapy in Defendant's home and group  
6 psychotherapy, the latter of which ended in or around February 2009.

7 8. Defendant wrote prescriptions for drugs to treat Plaintiff for various diagnosed  
8 psychiatric disorders, and placed Plaintiff on disability.

9 9. Defendant rendered psychiatric services to Plaintiff until on or about September  
10 2010. Defendant's final prescription for Plaintiff was written in September 2010.

11 10. In January 2009, Defendant placed Plaintiff on state disability, and then in May  
12 2010, Defendant placed Plaintiff on Social Security disability.

13 11. During the course of the aforementioned treatment of Plaintiff by Defendant,  
14 Defendant agreed to diagnose and treat Plaintiff's emotional problems, and to do all  
15 things necessary and proper in connection therewith, thus establishing the relationship of  
16 psychiatrist and patient between said Defendant and Plaintiff.

17 12. The State Court Judgment awarded Plaintiff a total award of \$602,500.00.

18 13. On October 13, 2011, Plaintiff filed a Complaint against Defendant in the Los  
19 Angeles Superior Court entitled *Christine Kelley v. Ruby Siddiqui, M.D., and Does 1*  
20 *through 20, inclusive*, Case No. SC 114484.

21 14. On April 7, 2014, the [Los Angeles Superior] Court entered a judgment against  
22 Defendant in the amount of \$602,500.00 [this court notes that this finding of fact is  
23 somewhat duplicative of Finding of Fact 12 above].

24 15. One month following the judgment against Defendant, the Defendant filed a  
25 chapter 7 bankruptcy.

26 16. On May 16, 2014, Defendant filed a voluntary Chapter 7 bankruptcy petition  
27 entitled *In re: Ruby Siddiqui*, Case Number 2:14-bk-19653.

1 17. On June 20, 2014, Plaintiff's chapter 7 bankruptcy Counsel and Plaintiff's  
2 Counsel both attended Defendant's Meeting of Creditors.

3 18. The chapter 7 trustee continued the Meeting of Creditors to July 11, 2014 and  
4 requested Defendant to produce records regarding these undisclosed preferential  
5 transfers and statements from her stock account.

6 19. On August 19, 2014, Plaintiff initiated the Instant Adversary Proceeding, case  
7 no. 2:14-ap-01549, to request an exception to discharge under Bankruptcy Code §  
8 523(a)(6), and a denial of discharge under Bankruptcy Code § 727(a)(2), (a)(3), (a)(4),  
9 and (a)(5) (AP docket no. 1).

10 20. On October 5, 2014, Defendant served Plaintiff with a Request for  
11 Interrogatories and Document Production ("Request for Discovery"). Defendant's  
12 responses to Plaintiff's Requests for Discovery were due January 30, 2015.

13 21. On November 12, 2014, Plaintiff submitted a complete response to  
14 Defendant's Request for Discovery and produced all relevant and available documents to  
15 Defendant.

16 22. On December 18, 2014, Plaintiff served Defendant with Plaintiff's Request for  
17 Interrogatories, Admissions, and Production of Documents ("Request for Discovery").  
18 Defendant's responses to Plaintiff's Requests for Discovery were due January 30, 2015.

19 23. On January 30, 2015, Plaintiff received Defendant's document production, but  
20 did not receive Defendant's responses to Plaintiff's Interrogatories.

21 24. On May 1, 2015, Plaintiff sent Defendant the First Meet and Confer letter,  
22 requesting Defendant to respond to Plaintiff's request for interrogatories and supplement  
23 Defendant's document production, on or before May 18, 2015.

24 25. On May 18, 2015, Defendant still failed to provide any supplemental response  
25 to Plaintiff's request for discovery.

26 26. On June 16, 2015, Plaintiff agreed to a Stipulation Continuing Hearing for Pre-  
27 Trial Conference (docket no. 19), since Defendant's discovery responses were due  
28

1 January 30, 2015, and that Defendant's responses to interrogatories and document  
2 production were still outstanding, and that Defendant intended to supplement them.

3 27. Pursuant to this Stipulation, Plaintiff agreed to extend the deadline for  
4 Defendant to supplement her discovery responses to July 1, 2015.

5 28. On July 1, 2015, Plaintiff received no discovery responses from Defendant.

6 29. At this point, Plaintiff and Defendant had scheduled a Mediation Conference  
7 for July 31, 2015. In the spirit of mediating and hopefully settling, Plaintiff's Counsel told  
8 Defendant's Counsel that Plaintiff will not compel Defendant to respond to discovery prior  
9 to the mediation conference, in hopes of reaching a settlement.

10 30. On July 31, 2015, Plaintiff and Defendant appeared to what proved to be an  
11 unsuccessful mediation conference.

12 31. On August 25, 2015, sometime after 7:00 pm, Defendant's Counsel emailed  
13 Plaintiff's Counsel approximately 30 emails, each email containing document production  
14 that Plaintiff already received previously, with the exception of missing TD Ameritrade  
15 bank statements.

16 32. This provided Plaintiff's Counsel a very short timeframe to review discovery  
17 prior to drafting the instant pre-trial stipulation.

18 33. Unfortunately, Defendant still had not responded to Plaintiff's request for  
19 interrogatories.

20 34. On September 10, 2015, Plaintiff sent a *second* Meet & Confer Letter  
21 requesting responses to Plaintiff's Request for Interrogatories, and regarding the  
22 deficient, incomplete and unsatisfactory document production from Defendant, requesting  
23 Defendant supplement her document production, no later than September 18, 2015.

24 35. On September 15, 2015, a Joint Pre-Trial Stipulation was filed by Plaintiff and  
25 Defendant (docket no. 22). A Pre-Trial Conference was scheduled on September 29,  
26 2015. In that Pre-Trial Conference, the Court noted that there were no objections in the  
27  
28

1 Pre-Trial Stipulation, and requested Plaintiff and Defendant file an Amended Pre-Trial  
2 Stipulation with the objections included.

3 36. On September 29, 2015, Defendant finally provided her responses to  
4 interrogatories.

5 37. On December 2, 2015, Plaintiff submitted her Trial Declaration (docket no. 26).

6 38. On December 16, 2015, the deadline for Defendant to submit Trial  
7 Declarations on behalf of Defendant pursuant to the Court's Pre-Trial Conference and  
8 Scheduling Order, no Trial Declaration by Defendant was filed.

9 39. On December 22, 2015, Plaintiff filed a Notice of Motion and Motion to Strike  
10 Defendants Answer and Enter Default Against Defendant, or in the Alternative, to  
11 Exclude Defendants Undisclosed Exhibits and Witnesses, due to Defendant's non-  
12 responsiveness in preparing for trial. The Court denied this Motion without prejudice and  
13 has vacated the trial date set and setting another pre-trial conference for February 9,  
14 2016 at 2:00 p.m.

15 40. The total requested by Plaintiff for general and compensatory damages is  
16 \$602,500, plus attorney fees incurred in bringing forth the instant adversary proceeding.

17 41. In addition to the undisputed findings of fact set forth above, the court makes  
18 the following findings of fact based on the testimony and exhibits received at trial,  
19 including Plaintiff's trial declaration as her direct testimony and Plaintiff's Trial Exhibits P-  
20 1 to P-62. In doing so, the court addresses the allegations in Plaintiff's adversary  
21 complaint and organizes its remaining findings of fact around the causes of action to  
22 which they relate.

23 **Plaintiff's 11 U.S.C. § 523(a)(6) Claim**

24 42. With respect to Plaintiff's claim under 11 U.S.C. § 523(a)(6), in paragraph 33 of  
25 the adversary complaint, Plaintiff alleges that "Defendant's misrepresentations were  
26 deliberate and intended to cause Plaintiff financial and emotional injury, in order to further  
27 Defendant's personal interest." *Adversary Complaint*, ECF 1 at 7, ¶ 33. However, the  
28

1 court has reviewed the allegations in the adversary complaint and cannot identify any  
2 misrepresentations allegedly made by Defendant to Plaintiff. Moreover, the court has  
3 reviewed Plaintiff's proposed findings of fact and conclusions of law, ECF 51, regarding  
4 her claim under 11 U.S.C. § 523(a)(6) to identify any misrepresentations by Defendant to  
5 Plaintiff, specifically the proposed conclusions of law, ¶¶ 2-8, relating to this claim, and  
6 the court cannot identify any misrepresentations allegedly made by Defendant to Plaintiff.

7 43. It is possible that Plaintiff in the adversary complaint, if very liberally  
8 construed, alleges misrepresentations that were made by Defendant to Plaintiff in that  
9 Defendant intentionally misrepresented Plaintiff's psychological condition to Plaintiff when  
10 Defendant misdiagnosed Plaintiff, and intentionally and wrongfully encouraged Plaintiff to  
11 enter psychiatric treatment and sign up for disability benefits. In her adversary complaint,  
12 Plaintiff does not allege a claim for non-dischargeability of debt based on fraud or  
13 misrepresentation under 11 U.S.C. § 523(a)(2)(A), but for willful and malicious conduct by  
14 Defendant against her under 11 U.S.C. § 523(a)(6). The willful and malicious conduct by  
15 Defendant towards Plaintiff is allegedly misdiagnosing Plaintiff's psychological condition  
16 and placing her on disability.

17 44. In Plaintiff's trial declaration, she testified:

18 16. [I]n 2011, I learned that Defendant had misdiagnosed me and that she  
19 never should have placed me on disability. I learned from the Social  
20 Security administrative proceedings brought against me in 2011 by  
21 defendant that Defendant had inaccurately stated to the social security  
22 office that I was schizoaffective (something I was never diagnosed with this)  
23 and stated she was prescribing numerous antipsychotic drugs that have  
24 never in fact been prescribed to me.

25 17. The evaluation reports submitted in relation to the Social Security  
26 proceeding found me to not be as psychology [sic] ill as Defendant reported  
27 me to be when placing me on disability.

28 *Plaintiff's Trial Declaration, Trial Exhibit P-62 at 4.*

45. This evidence does not support the allegations of Plaintiff regarding a  
misdiagnosis of her psychological condition, that Defendant made any  
misrepresentations to Plaintiff or that Defendant engaged in willful and malicious



1 condition by misdiagnosing Plaintiff. Plaintiff did not submit any admissible, corroborating  
2 testimony of a medical expert witness or documentary evidence demonstrating that  
3 Defendant had diagnosed Plaintiff with a particular disorder that Plaintiff did not have, nor  
4 did Plaintiff provide the court with any copies of the evaluation reports submitted in  
5 relation to her Social Security proceeding indicating that she was misdiagnosed, and  
6 these statements of Plaintiff are not credible because there is no foundation for her  
7 opinion that she was misdiagnosed and are based on inadmissible hearsay regarding  
8 alleged statements and opinions of the Social Security Administration. Exhibit 1 to  
9 *Plaintiff's Trial Declaration, Plaintiff's Trial Exhibit P-62*, is apparently a handwritten letter  
10 of Defendant about Plaintiff's psychological condition to the Social Security  
11 Administration, but there is no proof that any such diagnosis of Plaintiff by Defendant was  
12 inaccurate.

13 46. Plaintiff also relies upon Defendant's Trial Declaration, ECF 29, in support of  
14 the allegations of misdiagnosis. In paragraph 6 of Proposed Conclusions of Law in  
15 Plaintiff's Proposed Findings of Fact and Conclusions of Law, Plaintiff cites Defendant's  
16 Trial Declaration and contends as follows:

17 6. More shocking, Defendant placed Plaintiff on disability for unclear  
18 reasons. Defendant claims that she did so "because she [Plaintiff] was  
19 fired, mentally unstable and completely unpredictable and a possible danger  
20 to herself." See Defendant's Trial Declaration, ¶ 19. However, prior to  
21 placing Plaintiff on disability, Defendant states that "there was nothing  
22 alarming about her behavior." See Defendant's Trial Declaration, ¶ 13. If  
23 there was nothing alarming about Plaintiff's behavior. Then why did  
24 Defendant place Plaintiff on disability? Defendant contradicts herself and  
25 the evidence indicates that no proper medical evaluation was done on  
26 Plaintiff. Not one single medical document is produced by Defendant, which  
27 is surprising because Plaintiff was Defendant's patient for three years. As a  
28 result of being on disability, the financial toll on Plaintiff's income is  
indisputable. Plaintiff's income went from \$110,000.00 in 2007 and 2008 to  
less than \$3,500.00 from 2009 to 2011. Such conduct goes beyond all  
bounds of decency and shocks the conscience of a reasonable person,  
especially since it was being committed by a medical professional.

ECF 51 at 8, Proposed Conclusions of Law, ¶ 6. However, this evidence relied upon by  
Plaintiff regarding an alleged misdiagnosis by Defendant is inadmissible because  
Defendant's Trial Declaration was not received into evidence since no one offered it into

1 evidence, and thus, these contentions are unsupported. It is improper for a party to cite  
2 and rely upon evidence not in the record. In summary, the court has thoroughly reviewed  
3 the evidentiary record and determines that the evidence does not show that Defendant  
4 intentionally misrepresented Plaintiff's psychological condition to Plaintiff, that Defendant  
5 intentionally misdiagnosed Plaintiff, or that Defendant intentionally and wrongfully  
6 encouraged Plaintiff to enter psychiatric treatment or sign up for disability benefits.

7 47. In addition to the foregoing contentions, in paragraph 34 of the adversary  
8 complaint, Plaintiff alleges that Defendant engaged in the following willful and malicious  
9 conduct to support her claim under 11 U.S.C. § 523(a)(6):  
10

11 34. As alleged in paragraphs 18 through 23, all of the acts of Defendant  
12 were done and committed with the intent to cause Plaintiff severe emotional  
13 distress and/or were of such an outrageous character as to be beyond all  
14 bounds of decency and to shock the conscience of a reasonable person. In  
15 doing the despicable acts complained of herein, Defendant acted with  
16 oppression, fraud, malice and conscious disregard of the safety and welfare  
of plaintiff. Defendant knew that her acts exposed Plaintiff to a foreseeable  
risk of serious and grievous harm, and Plaintiff was injured as a result of  
said conduct.

17 *Adversary Complaint* at ¶ 34. In paragraphs 18 through 23 of the adversary  
18 complaint, Plaintiff alleges the following:

19 18. Defendant crossed professional boundaries with the Plaintiff, while she  
20 was a patient. Defendant had Plaintiff work for her in an  
administrative/personal capacity. Plaintiff served as Defendant's driver,  
including driving Defendant to her own psychiatric appointments.

21 19. Defendant had Plaintiff clear her apartment and run interference for her  
22 with her other patients. In April 2010, Defendant signed a lease for the  
apartment where Plaintiff lived. Defendant wrote off the apartment as a  
23 third office, and Plaintiff was listed as a tenant on the lease.

24 20. All of the acts of Defendant listed below were done and committed with  
25 the intent to cause Plaintiff severe emotional distress and/or were of such  
an outrageous character as to be beyond all bounds of decency and to  
26 shock the conscience of a reasonable person. In doing the despicable acts  
complained of herein, Defendant acted with oppression, fraud, malice and  
conscious disregard of the safety and welfare of plaintiff.  
27  
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1 21. Defendant knew that her acts would expose Plaintiff to a foreseeable  
2 risk of serious and grievous harm, and Plaintiff was injured as a result of  
said conduct as more fully set forth below.

3 22. Such conduct included, but was not limited to the following:

- 4 a. Defendant insisted that Plaintiff do personal chores and favors for  
her outside of the office in exchange for continued psychiatric  
5 treatment;
- 6 b. Defendant insisted Plaintiff assist her in forming a business  
designed to “get revenge on your ex.” When Plaintiff declined,  
7 Defendant threatened Plaintiff with the termination of psychiatric  
services and disability payments;
- 8 c. Defendant attempted to force Plaintiff to extort money from  
9 Plaintiff’s then boyfriend and to conduct surveillance on someone  
else who was Defendant’s psychiatric patient. When Plaintiff  
10 refused, defendant threatened Plaintiff that Defendant would turn  
Plaintiff into the Internal Revenue Service and Social Security;  
11 and
- 12 d. Defendant billed for services never rendered to Defendant,  
including many sessions that never occurred.

13 23. Plaintiff has suffered psychological and emotional injury and harm,  
14 including not only the immediate distress caused by Defendant and her  
conduct, but also long-term psychological injuries which were to a large  
15 extent only latent at the time of the wrongful conduct, and which have  
developed and occurred, and will in the future continue to develop and  
16 occur in Plaintiff, all to Plaintiff’s general damages. Plaintiff has further  
suffered an exacerbation of any emotional difficulties which were pre-  
17 existing the harmful treatment she received from Defendant.

18

19 48. Regarding these allegations—that Plaintiff worked for Defendant in an  
20 administrative or personal capacity, served as Defendant’s driver, cleared Defendant’s  
21 apartment, lived in an apartment that Defendant signed a lease for, did personal chores  
22 and favors for Defendant, that Defendant insisted that Plaintiff assist Defendant in  
23 forming a business designed to “get revenge on your ex”, that Defendant attempted to  
24 force Plaintiff to extort money from Plaintiff’s then boyfriend and to conduct surveillance  
25 on one of Defendant’s other psychiatric patients— the court makes the following findings  
26 of fact:

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1 49. The evidence shows that as stated in Plaintiff's Trial Declaration, Plaintiff  
2 worked for Defendant in an administrative or personal capacity. *Plaintiff's Trial*  
3 *Declaration, Plaintiff's Trial Exhibit P-62* at 4, ¶ 18.

4 50. The evidence does not show that Plaintiff served as Defendant's driver. The  
5 court has reviewed Plaintiff's testimony in her trial declaration and there was no testimony  
6 of Plaintiff driving Defendant. *See Plaintiff's Trial Declaration, Plaintiff Trial Exhibit P-62.*

7 51. The evidence does not show that Plaintiff cleared [cleaned?] Defendant's  
8 apartment. The court has reviewed Plaintiff's testimony in her trial declaration and there  
9 was no testimony of Plaintiff clearing [cleaning?] Defendant's apartment. *See Plaintiff's*  
10 *Trial Exhibit P-62.*

11 52. The evidence shows that as stated in Plaintiff's Trial Declaration, Defendant  
12 entered into a lease agreement whereby Defendant's business was listed as the owner  
13 on the lease and Plaintiff was listed as a resident. *Plaintiff's Trial Declaration, Plaintiff's*  
14 *Trial Exhibit P-62* at 4-5, ¶ 20.

15 53. The evidence does not show that Plaintiff did personal chores and favors for  
16 Defendant. The court has reviewed Plaintiff's testimony in her trial declaration and there  
17 was no testimony of Plaintiff doing personal chores or favors for Defendant. *See*  
18 *Plaintiff's Trial Declaration, Plaintiff's Trial Exhibit P-62.*

19 54. The evidence does not show that Defendant insisted that Plaintiff assist  
20 Defendant in forming a business designed to "get revenge on your ex." The court has  
21 reviewed Plaintiff's testimony in her trial declaration and there was no testimony of  
22 Defendant insisting that Plaintiff assist Defendant in forming a business designed to "get  
23 revenge on your ex." *See Plaintiff's Trial Declaration, Plaintiff's Trial Exhibit P-62.*

24 55. The evidence shows that as stated in Plaintiff's Trial Declaration, Defendant  
25 requested that Plaintiff get \$20,000 from Plaintiff's boyfriend, but the evidence also shows  
26 that Plaintiff did not agree to this. *Plaintiff's Trial Declaration, Plaintiff's Trial Exhibit P-62*  
27 *at 6, ¶ 20.*

1           56. The evidence does not show that Defendant attempted to force Plaintiff to  
2 extort money from Plaintiff's then boyfriend and to conduct surveillance on one of  
3 Defendant's other psychiatric patients. The court has reviewed Plaintiff's testimony in her  
4 trial declaration and there was no testimony of Defendant attempting to force Plaintiff to  
5 extort money from Plaintiff's then boyfriend and to conduct surveillance on one of  
6 Defendant's other psychiatric patients. *See Plaintiff's Trial Declaration, Plaintiff's Trial*  
7 *Exhibit P-62.*

8           57. In paragraph 7 of Proposed Conclusions of Law in Plaintiff's Proposed  
9 Findings of Fact and Conclusions of Law, ECF 51 at 8-9, Plaintiff contends that  
10 Defendant engaged in the following willful and malicious conduct to support her claim  
11 under 11 U.S.C. § 523(a)(6):

12           7. In doing the despicable acts complained of herein, Defendant acted with  
13 oppression, fraud, malice and conscious disregard of the safety and welfare  
14 of plaintiff. Such conduct included, but was not limited to the following: (1)  
15 Defendant insisted that Plaintiff do personal chores and favors for her  
16 outside the office in exchange for continued psychiatric treatment; (2)  
17 Defendant insisted Plaintiff assist her in forming a business designed to "get  
18 revenge on your ex." When Plaintiff declined, Defendant threatened Plaintiff  
19 with the termination of psychiatric services and disability payments; (3)  
20 Defendant attempted to force Plaintiff to extort money from Plaintiff's then  
boyfriend and to conduct surveillance on someone else who was  
Defendant's psychiatric patient. When Plaintiff refused, Defendant  
threatened Plaintiff that Defendant would run Plaintiff into the Internal  
Revenue Service and Social Security; and (4) Defendant billed for services  
never rendered to Defendant, including many sessions that never occurred.  
See Plaintiff's Trial Declaration, ¶ 19. See also, Exhibit "3" to Plaintiff's Trial  
Declaration.

21 *Plaintiff's Proposed Findings of Fact and Conclusions of Law*, ECF 51 at 7-8,  
22 Conclusions of Law, ¶ 7. The only evidence cited for the contentions of Proposed  
23 Conclusions of Law, ¶ 7, consisted of Plaintiff's Trial Declaration, ¶ 19, and Exhibit 3  
24 attached thereto. In paragraph 19 of Plaintiff's trial declaration, she testified:

25           19. Early into my treatment period, Defendant would invite me over  
26 whenever I was feeling anxious or could not sleep. I believed this to be  
27 Defendant being a kind friend at all hours. However, I later learned that  
28 Defendant was billing these "friendly" visits as individual treatment sessions  
by Defendant. Attached hereto as Exhibit "3" is a true and correct copy of

1 Defendant's bill to my health insurance carrier for a total amount of  
2 \$41,560.00.

3 *Plaintiff's Trial Declaration, Trial Exhibit P-62* at 4. The court determines that Plaintiff has  
4 not shown by a preponderance of the evidence that the conduct of Defendant as a  
5 psychiatrist charging Plaintiff's health insurance carrier for counseling sessions for her  
6 patient, Plaintiff, at Defendant's home described in paragraph 19 of Plaintiff's Trial  
7 Declaration constitutes a willful and malicious injury contemplated under 11 U.S.C. §  
8 523(a)(6) because Defendant giving Plaintiff treatment at her home does not seem  
9 outrageous, or even extraordinary. No other evidence was cited to by Plaintiff in her  
10 proposed findings of fact and conclusions of law to support the other allegations of  
11 Proposed Conclusions of Law, ¶ 7. The other contentions of Proposed Conclusions of  
12 Law, ¶ 7, are identical to those alleged in paragraphs 18 through 23 and 34 of the  
13 adversary complaint, which as discussed above are not supported by sufficient evidence.

14 58. The court has thoroughly reviewed the evidentiary record and the totality of  
15 the evidence regarding whether Defendant committed the above-described acts with the  
16 intent to cause Plaintiff severe emotional distress, whether such acts were of an  
17 outrageous character as to be beyond all bounds of decency and to shock the  
18 conscience of a reasonable person, and whether such acts were done with oppression,  
19 fraud, malice and conscious disregard of the safety and welfare of Plaintiff, does not  
20 support a finding of willful and malicious conduct by Defendant towards Plaintiff.

21 59. The only other evidence submitted by Plaintiff related to these allegations of  
22 willful and malicious acts by Defendant against Plaintiff consisted of copies of Plaintiff's  
23 state court complaint and corresponding docket and judgment. *Plaintiff's Trial Exhibits P-*  
24 *1 through P-3*. Nonetheless, for purposes of ruling on issues of collateral estoppel  
25 herein, the court finds that the state court judgment was a default judgment based upon a  
26 complaint that pleaded causes of action for professional negligence, breach of fiduciary  
27 duty, and intentional interference of emotional distress and that the state court in its  
28 judgment did not make any express findings that can support the allegations of willful and

malicious conduct as described above. *Plaintiff's Trial Exhibits P-2 and P-3, Complaint for Damages, Christine Kelley v. Ruby Siddiqui, M.D., et al., Case No. SC114484 (Superior Court of California, County of Los Angeles, complaint filed on October 13, 2011) and Notice of Entry of Judgment in favor of Plaintiff, Christine Kelley v. Ruby Siddiqui, M.D., et al., Case No. SC114484 (Superior Court of California, County of Los Angeles, notice filed on April 2, 2014).*

**Plaintiff's 11 U.S.C. § 727(a)(2) Claim**

60. In the adversary complaint, Plaintiff alleges that within one year of the petition date, and with the intent to hinder or delay Plaintiff, Defendant transferred, removed, or concealed property of the estate, and/or she has concealed property of the estate as set forth in paragraph 29 of the adversary complaint. *Adversary Complaint* at 8, ¶ 36. In paragraph 29 of the adversary complaint, Plaintiff alleged the following:

29. On June 20, 2014, Plaintiff's Counsel attended Defendant's Meeting of Creditors, where Defendant admitted, on the record, her failure to disclose truthful and accurate information in her schedules, including, but not limited to the following:

- a. At the Meeting of Creditors, Defendant admitted to having had a sewing machine worth \$20,000.00, and stated she gave it away when she had a "bipolar episode." Defendant failed to disclose this asset in her schedules.
- b. At the Meeting of Creditors, Defendant admitted to having had diamonds and stated she gave it away when she had a "bipolar episode." Defendant failed to disclose this asset in her schedules.
- c. At the Meeting of Creditors, Defendant admitted to having had other contents in her condominium that she gave away when she had a "bipolar episode." Defendant failed to disclose these assets in her schedules.
- d. At the Meeting of Creditors, Defendant stated she "donated" the above assets to the Salvation Army, but when asked to produce receipts to prove it, she stated she had no receipts.
- e. When Plaintiff's Counsel suggested she try to obtain receipts from the Salvation Army, Defendant changed her story and stated she "donated" to different Salvation Army stores – so obtaining any proof would not be possible.
- f. Defendant again changed her story, and stated she had also donated some of the above assets to a "friend". However,

Defendant's SOFA does not disclose any "other property...transferred either absolutely or as security within two years immediately preceding the commencement of this case."

g. Defendant further discloses on her Schedule B that she has interest in a "collection of books, CDs, DVDs, [and] Debtor's own art work" in the amount of \$500.00, yet in the Meeting of Creditors, Defendant admitted to have a camera. Defendant intentionally failed to disclose this asset in her schedules.

h. Defendant's Schedule J states she makes monthly payments of \$1,000.00 to "[s]upport [o]f [f]amily [i]n Pakistan," yet in the Meeting of Creditors, Defendant admitted she had stopped sending money to her family in Pakistan three months prior to filing the Instant Bankruptcy, contrary to what is stated in her schedules – which shows her intent to transfer assets of the estate.

i. On Defendant's schedule B(2), she claims to have \$500.00, in a TD Waterhouse account. However, in the Meeting of Creditors, Defendant admitted that the previous balance of the TD Waterhouse account was over \$300,000.00. When asked what she did with that money, she stated she "lost" it all. Again, Defendant's SOFA does not disclose any "other property...transferred either absolutely or as security within two years immediately preceding the commencement of this case."

*Adversary Complaint* at 6-7, ¶ 29.

61. In paragraphs 11 and 12 of Proposed Conclusions of Law in Plaintiff's Proposed Findings of Fact and Conclusions of Law, ECF 51 at 9-11, Plaintiff contends that Defendant engaged in the following fraudulent transfers or concealments of property within one year of the petition date, or thereafter, with intent to hinder, delay or defraud creditors to support her claim under 11 U.S.C. § 727(a)(2):

11. It is undisputed (as admitted at the Meeting of Creditors) that Defendant has either transferred or concealed her interests, including (1) over \$300,000.00 in a TD Waterhouse account; (2) jewelry and diamonds and diamond tools of an undisclosed value; (3) a sewing machine worth \$20,000.00; (4) various contents in her condominium of an undisclosed value; and (5) a camera with an undisclosed value. *Compare* Plaintiff's Trial Exhibit "51" (main bankruptcy schedules) with Plaintiff's Trial Exhibit "6" (341(a) transcript). Despite conceding that Defendant has either transferred or concealed her interests in the above, the Defendant's purported explanation for doing so is that the Defendant is "bipolar." See Defendant's Trial Declaration, ¶¶ 6-7. However, such a purported explanation is nonsensical because allegedly being "bipolar" does not equate, or even explain, any transfers or concealment of the property of the bankruptcy estate. Moreover, Defendant has provided no competent or admissible evidence establishing her purported "bipolar" medical condition.



1 Defendant's only evidence is her own opinion that she is "bipolar," but by  
2 admission, her medical license was revoked, so her opinion is not an expert  
3 opinion, and thereby inadmissible in this case. See Defendant's Trial  
4 Declaration, ¶ 27. See also, Plaintiff's Trial Exhibits 47-49.

5 12. The Defendant's pre-petition and post-petition concealments were  
6 made with the intent to hinder, delay or defraud her creditors or the Trustee,  
7 and as such, her discharge should be denied pursuant to § 727(a)(2). More  
8 specifically, Defendant gave inconsistent explanations regarding the  
9 Defendant's transfer or concealment of her interests in: (1) over  
10 \$300,000.00 in a TD Waterhouse account; (2) jewelry and diamonds and  
11 diamond tools of an undisclosed value; (3) a sewing machine worth  
12 \$20,000.00; (4) various contents in her condominium of an undisclosed  
13 value; and (5) a camera with an undisclosed value. Compare Plaintiff's Trial  
14 Exhibit "51" (main bankruptcy schedules) with Plaintiff's Trial Exhibit "6"  
15 (341(a) transcript). For instance, at the Meeting of Creditors, the Defendant  
16 stated she "donated" the above assets to the Salvation Army, but when  
17 asked to produce receipts to prove it, she stated she had no receipts. See  
18 Plaintiff's Trial Exhibit "6". When Plaintiff's Counsel suggested she try to  
19 obtain receipts from the Salvation Army, the Defendant changed her story  
20 and stated she "donated" to different Salvation Army stores---so obtaining  
21 any proof would not be possible. The Defendant again changed her story,  
22 and stated she had also donated some of the above assets to a "friend."  
23 However, Defendant's SOFA does not disclose "other property...  
24 transferred either absolutely or as security within two years immediately  
25 proceeding the commencement of this case." Compare Plaintiff's Trial  
26 Exhibit 51 (main bankruptcy schedules) with Plaintiff's Exhibit 6 (341(a)  
27 transcript).

28 *Plaintiff's Proposed Findings of Fact and Conclusions of Law*, ECF 51 at 9-11,  
*Conclusions of Law*, ¶¶ 11 and 12. The only evidence cited for the contentions of  
Proposed Conclusions of Law, ¶¶ 11 and 12, consisted of Plaintiff's Trial Exhibit P-51,  
Defendant's Bankruptcy Schedules, Plaintiff's Trial Exhibit P-6, Transcript of 341(a)  
Meeting of Creditors, Defendant's Trial Declaration, ¶ 6, 7 and 27, and Plaintiff's Trial  
Exhibits P-47-P-49, California Medical Board's Decision and Rulings relating to  
Defendant's Suspension and Surrender of License.

62. Upon review of the evidentiary record, for purposes of Plaintiff's 11 U.S.C. §  
727(a)(2) cause of action, the evidence does not show that Defendant transferred any of  
the above mentioned assets in paragraph 29a-j within one year of the petition date, May  
16, 2014, or thereafter, with the intent to hinder or delay Plaintiff as alleged in paragraph  
36 of Plaintiff's adversary complaint, because Plaintiff has failed to prove that Defendant  
made such transfers during that time or that Defendant made such transfers with the

1 intent to hinder or delay Plaintiff. The court makes the following findings of fact on each  
2 of Plaintiff's allegations in paragraph 29a-j of the adversary complaint:

3       **63. Paragraph 29a:** Regarding Plaintiff's sewing machine, at her 341(a) meeting  
4 of creditors, Defendant testified that she gave her \$20,000.00 sewing machine away "a  
5 couple of years ago" during a bipolar episode. *Transcript of 341(a) Meeting of Creditors,*  
6 *Plaintiff's Trial Exhibit P-6* at 7 and 12-13. Defendant's testimony during the 341(a)  
7 meeting of creditors indicates that Defendant did not transfer the sewing machine within  
8 one year of the petition date, or thereafter, and Plaintiff has not provided any other  
9 evidence proving such transfer during the relevant time period. Moreover, Plaintiff has  
10 failed to provide evidence that such transfer was made with the intent to hinder or delay  
11 creditors. Defendant's explanation of the transfer during her 341(a) meeting of creditors  
12 that she gave it to a friend who did contractor work at her apartment while she was in a  
13 bipolar episode seems plausible in light of her having been on disability herself since at  
14 least 2012. *Transcript of 341(a) Meeting of Creditors, Plaintiff's Trial Exhibit P-6* at 6-7  
15 and 12-13; *Defendant's Bankruptcy Schedules, Statement of Financial Affairs, Plaintiff's*  
16 *Trial Exhibit P-51* at 31. Accordingly, the court determines that Plaintiff has not shown by  
17 a preponderance of the evidence that Defendant transferred the sewing machine within  
18 one year of the petition date, or thereafter, with the intent to hinder, delay or defraud  
19 creditors.

20       **64. Paragraph 29b:** Regarding Defendant's diamonds, Defendant testified at her  
21 341(a) meeting of creditors that she gave away gemstones or diamonds worth about  
22 \$1,600 "about two years ago", *Transcript of 341(a) Meeting of Creditors, Plaintiff's Trial*  
23 *Exhibit P-6* at 6. Defendant's testimony during the 341(a) meeting of creditors indicates  
24 that Defendant did not transfer the diamonds within the one year period before the  
25 petition date, or thereafter, and Plaintiff has not provided any other evidence proving that  
26 such transfer occurred during the relevant time period. Moreover, Plaintiff has failed to  
27 provide other evidence that Defendant transferred the diamonds or gemstones with the  
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1 intent to hinder or delay Plaintiff. Defendant's explanation of the transfer during her  
2 341(a) meeting of creditors that she gave them away during a bipolar episode seems  
3 plausible in light of her having been on disability herself since at least 2012. *Transcript of*  
4 *341(a) Meeting of Creditors, Plaintiff's Trial Exhibit P-6* at 6. Moreover, the value of the  
5 diamonds or gemstones is minimal, and Plaintiff has not provided other evidence to show  
6 a greater value, and the court finds that given the modest value of these assets, it is not  
7 likely that Defendant intended to hinder, delay or defraud creditors as to these assets.  
8 Accordingly, the court determines that Plaintiff has not shown by a preponderance of the  
9 evidence that Defendant transferred the diamonds within one year of the petition date, or  
10 thereafter, with the intent to hinder, delay or defraud creditors.

11       **65. Paragraph 29c:** Regarding the contents of Defendant's condominium,  
12 Defendant testified at her 341(a) meeting of creditors that she gave away other contents  
13 of her condominium, because Defendant stated that this happened "about a year ago" at  
14 the time that the condominium was being foreclosed. *Transcript of 341(a) Meeting of*  
15 *Creditors, Plaintiff's Trial Exhibit P-6* at 8. Defendant's testimony during the 341(a)  
16 meeting of creditors indicates that Defendant did not transfer the contents of her  
17 condominium within the one year period before the petition date, or thereafter, and  
18 Plaintiff has not provided any other evidence proving that such transfer occurred during  
19 the relevant time period. Defendant's statement of financial affairs indicates that the  
20 foreclosure sale was on November 15, 2012, which was over a year before she filed her  
21 bankruptcy petition on May 16, 2014, which indicates that the transfer of these assets  
22 took place outside the one year period before the petition date, or thereafter.

23 *Debtor's Bankruptcy Schedules* at 32, *Plaintiff's Exhibit P-51*. Furthermore, Plaintiff has  
24 failed to provide other evidence that Defendant transferred the other contents of her  
25 condominium with the intent to hinder, delay or defraud creditors. Defendant's  
26 explanation of the transfer during her 341(a) meeting of creditors that she gave the  
27 contents of her condominium away to the Salvation Army because the condominium was  
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1 being foreclosed seems plausible because she had to move to a new location and either  
2 had to move them, store them or give them away. *Transcript of 341(a) Meeting of*  
3 *Creditors, Plaintiff's Trial Exhibit P-6* at 7-8 and 12. Accordingly, the court determines  
4 that Plaintiff has not shown by a preponderance of the evidence that Defendant  
5 transferred the contents of her condominium within one year of the petition date, or  
6 thereafter, with the intent to hinder, delay or defraud creditors.

7       **66. Paragraph 29d:** Regarding Defendant's donations of assets to the Salvation  
8 Army, Plaintiff contends that her failure to produce receipts to prove these donations  
9 indicates an intent to hinder, delay or defraud creditors as to the transfers of these  
10 assets. *Adversary Complaint*, ¶ 29d. Defendant's explanation that she did not keep the  
11 charitable receipts for the Salvation Army donations because she was not "paying any  
12 taxes" on her disability income because she had been on disability for three years seems  
13 plausible because she did not intend to claim any charitable deductions for these  
14 donations since she did not expect income tax liability on her disability income.  
15 *Transcript of 341(a) Meeting of Creditors, Plaintiff's Trial Exhibit P-6* at 8 and 12. Plaintiff  
16 did not directly address this statement of Defendant's why Defendant did not have  
17 receipts for her Salvation Army donations. *Plaintiff's Proposed Findings of Fact and*  
18 *Conclusions of Law*, ECF 51 at 9-11, *Conclusions of Law*, ¶¶ 11 and 12. Accordingly, the  
19 court determines that Plaintiff has not shown by a preponderance of the evidence that  
20 Defendant's failure to produce donation receipts for her donations to the Salvation Army  
21 proves an intent to hinder, delay or defraud creditors.

22       **67. Paragraph 29e:** Regarding Plaintiff's allegation that Defendant changed her  
23 story about the Salvation Army donations, the court finds that there is nothing  
24 inconsistent between Defendant's alleged statements in paragraphs 29d and e of the  
25 adversary complaint that she first said that she had no charitable donation receipts and  
26 then said that she would not have any because she donated to different Salvation Army  
27 locations. First, as noted above, Defendant's explanation that she did not keep the  
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1 charitable receipts for the Salvation Army donations because she was not “paying any  
2 taxes” because she had been on disability for three years seems plausible because she  
3 was not claiming her charitable donations as deductions against her income tax liability  
4 based on her disability income. *Transcript of 341(a) Meeting of Creditors, Plaintiff’s Trial*  
5 *Exhibit P-6* at 8 and 12. Whether Defendant actually had any income tax liability from her  
6 disability income is unclear on this record since no evidence was offered to rebut her  
7 statements, but her statements that she did not are probative of her intent with respect to  
8 asking for receipts from Salvation Army and seem credible to the court under the  
9 circumstances. Second, Defendant testified at her 341(a) meeting of creditors that she  
10 made donations to the Salvation Army in Valencia, California, but also to other people,  
11 including Renzo Kuniyo, whom she gave the sewing machine. *Id.* at 12-13. The court  
12 determines that Defendant’s statements seem credible in that she was repaying Renzo  
13 Kuniyo for work that he did for her at her condominium and such statements were not  
14 inconsistent as argued by Plaintiff in that Defendant stated that she made donations to  
15 the Salvation Army in Valencia and that she later remembered giving items to other  
16 people, including the sewing machine to Renzo Kuniyo. *Id.* The court determines that  
17 this evidence as to the purported inconsistent explanations by Plaintiff is insufficient to  
18 show by the preponderance of the evidence that Defendant acted with an intent to hinder,  
19 delay or defraud creditors with respect to the donation of assets she made to the  
20 Salvation Army or the transfer of the sewing machine or that Defendant attempt to  
21 conceal these transfers of assets.

22       **68. Paragraph 29f:** Regarding Plaintiff’s allegation that Defendant changed her  
23 story and donated “some of the above assets” to a “friend,” for purposes of 11 U.S.C. §  
24 727(a)(2) claim, the court notes that Defendant’s statements were made during her  
25 testimony at the 341(a) meeting of creditors. *Transcript of 341(a) Meeting of Creditors,*  
26 *Plaintiff’s Trial Exhibit P-6* at 6-9 and 12. It appears to the court that Defendant during  
27 her testimony was clarifying where these assets went as she stated that they did not all  
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1 go to the Salvation Army, but also to “some other people.” *Id.* at 12. Defendant testified  
2 that the sewing machine went to a man named Renzo Kuniyo, who did work at her house  
3 and the machine was “kind of a payment” for the work and that she “wasn’t thinking right”  
4 (i.e., during a bipolar episode). *Id.* In the court’s views, these statements made by  
5 Defendant during her 341(a) meeting testimony are inconclusive about her intent to  
6 hinder, delay or defraud creditors because there were no followup questions or testimony  
7 about other assets given to parties other than the Salvation Army and Mr. Kuniyo. *Id.* at  
8 6-9 and 12-13. Plaintiff argues that Defendant’s inconsistent statements demonstrate an  
9 intent to hinder, delay or defraud creditors, but the court finds that these alleged  
10 inconsistencies are insufficient to prove such intent, and besides, as discussed earlier,  
11 the evidence indicates that the transfers were outside the one-year period before the  
12 petition date, or thereafter. *Plaintiff’s Proposed Findings of Fact and Conclusions of Law*,  
13 ECF 51 at 10-11, *Conclusions of Law*, ¶ 12.

14 69. Plaintiff also argues that “the Defendant’s SOFA does not disclose any ‘other  
15 property . . . transferred either absolutely or as security within two years immediately  
16 preceding the commencement of this case.” *Id.*, citing, *Plaintiff’s Trial Exhibit P-52 (main*  
17 *bankruptcy schedules) and Plaintiff’s Trial Exhibit P-6 (341(a) transcript)*. In her  
18 adversary complaint and her proposed findings of fact and conclusions of law, Plaintiff  
19 does not give a precise citation to where in the SOFA, Statement of Financial Affairs, that  
20 Defendant failed to disclose other transfers. *Adversary Complaint*, ¶ 29f; *Plaintiff’s*  
21 *Proposed Findings of Fact and Conclusions of Law*, ECF 51 at 10-11, *Conclusions of*  
22 *Law*, ¶ 12. Apparently, Plaintiff refers to Item 10, “Other transfers” on the SOFA, which  
23 asks, “List all other property, other than property transferred in the ordinary course of the  
24 business or financial affairs of the debtor, transfer absolutely or as security within **two**  
25 **years** immediately preceding the commencement of this case.” *Debtor’s Bankruptcy*  
26 *Schedules* at 33, *Plaintiff’s Exhibit P-51*. However, the references to “[o]ther transfers”  
27 and “other property” in Item 10 on the SOFA follows the request for disclosure on Item 7

1 on the SOFA, "Gifts," which asks, "List all gifts or charitable contributions made within  
2 **one year** immediately preceding the commencement of this case except ordinary and  
3 usual gifts to family members aggregating less than \$200 in value per individual family  
4 member and charitable contributions aggregating less than \$100 per recipient." *Id.* at 32.  
5 This item appears to be the relevant one for the transfers made by Defendant since she  
6 made gifts or charitable contributions to Salvation Army, Mr. Kuniyo and others, but as  
7 stated earlier, the relevant time period is one year, not two years, before the petition date,  
8 and based on the evidence in the record, the gifts or charitable contributions made by  
9 Defendant more than a year before the petition date are not reportable on Item 7, "Gifts,"  
10 nor are they reportable on Item 10, "Other transfers," because they were gifts, including  
11 charitable contributions, and not other transfers of property. Accordingly, the court  
12 determines that Plaintiff has not shown by a preponderance of the evidence that  
13 Defendant made inconsistent statements or failed to disclose gifts and charitable  
14 contributions on her SOFA to demonstrate that she transferred property within one year  
15 of the petition date, or thereafter, with the intent to hinder, delay or defraud creditors.

16 **70. Paragraph 29g:** Regarding Plaintiff's allegation that Defendant owned a  
17 camera that Defendant did not list on her schedules, this allegation is irrelevant for  
18 purposes of Plaintiff's 11 U.S.C. § 727(a)(2) claim about transfers of property since  
19 Plaintiff did not allege that Defendant transferred the camera within one year of the  
20 petition date with the intent to hinder or delay creditors despite the argument made in  
21 Plaintiff's proposed findings of fact and conclusions of law relating to the 11 U.S.C. §  
22 727(a)(2) claim. *Plaintiff's Proposed Findings of Fact and Conclusions of Law*, ECF 51 at  
23 9-11, *Conclusions of Law*, ¶¶ 11 and 12.

24 **71. Paragraph 29h:** Regarding Plaintiff's allegations that Defendant's inconsistent  
25 statements in her Schedule J, Expense Statement, states that Defendant made monthly  
26 payments of \$1,000 to support her family in Pakistan, *Plaintiff's Trial Exhibit P-51* at 27,  
27 and Defendant's statements at her 341(a) meeting of creditors that Defendant stopped  
28

1 sending the payments three months before the meeting, *Transcript of 341(a) Meeting of*  
2 *Creditors, Plaintiff's Trial Exhibit P-6* at 5, prove an intent to transfer assets to hinder,  
3 delay and defraud creditors. The evidence indicates that Defendant made monthly  
4 support payments of \$1,000 to her family within one year of the petition date, which is  
5 evidenced by both Defendant's Schedule J and her statement at her 341(a) meeting of  
6 creditors.

7 72. However, the evidence does not show an intent to hinder, delay or defraud  
8 creditors because there is no evidence that such transfers to support her family were  
9 outside of Defendant's ordinary course of business. Defendant's explanation that she  
10 was supporting her father and her sister with monthly payments of \$1,000 seems  
11 plausible in that they had no other source of support other than her. *Transcript of 341(a)*  
12 *Meeting of Creditors, Plaintiff's Trial Exhibit P-6* at 5; *Defendant's Bankruptcy Schedules,*  
13 *Statement of Financial Affairs, Plaintiff's Trial Exhibit P-51* at 27. Defendant's providing  
14 family support to her father and her sister who had no other sources of support seems to  
15 this court to be ordinary course of business for her and does not indicate an intent to  
16 hinder, delay and defraud creditors. Plaintiff has failed to provide other evidence that  
17 such family support was made with the intent to hinder, delay or defraud creditors.

18 73. **Paragraph 29i:** Regarding the allegation in paragraph 29(i), Plaintiff repeated  
19 the allegation in paragraph 37 of the adversary complaint, then elaborated on it in  
20 paragraph 38 of the complaint:

21  
22 37. On Defendant's schedule B(2), she claims to have \$500.00, in a  
23 TD Waterhouse account. However, in the Meeting of Creditors,  
24 Defendant admitted that the previous balance of the TD  
25 Waterhouse account was over \$300,000.00. When asked what  
26 she did with that money, she stated she "lost" it all. Again,  
27 Defendant's SOFA does not disclose any "other  
28 property...transferred either absolutely or as security within two  
years immediately preceding the commencement of this case.

38. Plaintiff avers that Defendant either: (a) has attempted to  
conceal her interests in the TD Accounts from Plaintiff, the Court  
and Debtor's Chapter 7 Trustee; (b) withdrew the majority of the  
funds from this account immediately before the petition Date, and



1 failed to list same as cash on hand in her Schedule B-1; (c)  
2 transferred such funds to her family members with the sole  
3 purpose of hindering or delaying Plaintiff and her Chapter 7  
4 Trustee from being able to locate and/or seize or attach same; (d)  
5 withdrew majority of funds from these accounts and after the  
6 Petition Date is holding funds in the name of a family member  
7 with the sole purpose of hindering and delaying Plaintiff and her  
8 Chapter 7 Trustee from being able to locate and/or to seize or  
9 attach the same.

6 74. Plaintiff has not provided evidence that the \$300,000 in Defendant's TD  
7 Waterhouse Account was transferred within the one year period before the petition date  
8 on May 16, 2014 under 11 U.S.C. § 727(a)(2)(A). Plaintiff provided the following limited  
9 evidence of Defendant's TD Waterhouse Account balances during the one year  
10 preceding the filing of Defendant's petition: the account statements for 04/01/13 through  
11 04/30/13, which reflect an opening balance of \$24,310.68, disbursements of \$6,254.93,  
12 and a closing balance of \$18,055.93, *Plaintiff's Trial Exhibit P-42, TD Ameritrade Account*  
13 *Statements for Ruby Siddiqui*, at Bates stamped page numbers 001115 through 001118;  
14 the account statements for 08/01/13 through 08/31/13, which reflect an opening balance  
15 of \$4,011.18, disbursements of \$185.63, and a closing balance of \$3,825.58, *Plaintiff's*  
16 *Trial Exhibit P-42* at Bates stamped page numbers 001121 through 001123; the account  
17 statements for 12/01/13 through 12/31/13, which reflect an opening balance of \$593.36,  
18 disbursements of \$0.00, and a closing balance of \$593.37, *Plaintiff's Trial Exhibit P-42* at  
19 Bates stamped page numbers 001126 through 001128; the account statements for  
20 01/01/14 through 01/31/14, which reflect an opening balance of \$593.37, disbursements  
21 of \$0.00, and a closing balance of \$593.38, *Plaintiff's Trial Exhibit P-43* at Bates stamp  
22 number 001131-001133; the account statements for 02/01/14 through 02/28/14, which  
23 reflect an opening balance of \$593.38, disbursements of \$0.00, and a closing balance of  
24 \$593.38, *Plaintiff's Trial Exhibit P-43* at Bates stamped page numbers 001135 through  
25 001136; the account statements for 03/01/14 through 03/31/14, which reflect an opening  
26 balance of \$593.38, disbursements of \$0.00, and a closing balance of \$593.39, *Plaintiff's*  
27 *Trial Exhibit P-43* at Bates stamped page numbers 001143 through 001144; the account  
28

1 statements for 04/01/14 through 04/31/14, which reflect an opening balance of \$593.39,  
2 disbursements of \$0.00, and a closing balance of \$593.39, *Plaintiff's Trial Exhibit P-43* at  
3 Bates stamped page numbers 001147 through 001148. This documentary evidence thus  
4 indicates that the TD Waterhouse account was substantially diminished one year before  
5 the petition date on May 16, 2014, and as of April 1, 2013, the opening account balance  
6 was only \$24,310.68, which is a far cry from the \$300,000 that Plaintiff alleges was  
7 unexplainably dissipated.

8         75. Moreover, this documentary evidence only lists disbursements of \$6,254.93  
9 during April 2013 and \$185.63 during August 2013 from April 1, 2013 through April 31,  
10 2014, this ending date right before the petition date of May 16, 2014, and the court could  
11 compute total disbursements between April 30, 2013 and August 31, 2013 by looking at  
12 the year to date disbursements as of April 30, 2013 in the amount of \$22,899.86 and the  
13 year to date disbursements as of August 31, 2013 in the amount of \$37,130.50, yielding  
14 an amount of \$14,230.64 in disbursements between April 30, 2013 and August 31, 2013,  
15 and taking out the \$185.63 during August 2013 already noted, leaves disbursements of  
16 \$14,045.01 between April 30, 2013 and August 1, 2013. This evidence of these  
17 disbursements do not show that these constitute transfers with an intent to hinder, delay  
18 or defraud creditors because there is no evidence of who received the disbursements or  
19 transfers, nor is there evidence that the disbursements or transfers were made with any  
20 intent to hinder, delay or defraud creditors because there is no evidence that such  
21 disbursements or transfers were outside of Defendant's ordinary course of business. The  
22 amounts of these disbursements of \$6,254.93, \$185.63 and \$14,230.64 are relatively  
23 modest over five months between April and August 2013 (i.e., an average of \$4,097.11 a  
24 month), and do not show the large unexplained transfers of up to \$300,000 as alleged by  
25 Plaintiff. There is no evidence that such disbursements were not used to pay  
26 Defendant's ordinary living or business expenses. There is a gap in the account  
27 statements between April 30, 2013 with a closing balance of \$18,055.93 and August 1,  
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1 2013 with an opening balance of \$4,011.18, but one can determine the amount of the  
2 disbursements from the account during those months, which the court has computed  
3 above, and there is no evidence indicating whether the disbursed funds were or were not  
4 used in Defendant's ordinary living or business expenses. In the court's view, this  
5 evidence is inconclusive to show any bad intent by Defendant to hinder, delay or defraud  
6 creditors as to these disbursements.

7 76. Accordingly, the court determines that the preponderance of the evidence  
8 does not show that Defendant transferred \$300,000 in funds, or any portion thereof, from  
9 her TD Waterhouse Account with the intent to hinder, delay or defraud creditors.

10 **Plaintiff's 11 U.S.C. § 727(a)(3) Claim**

11 77. In paragraph 40 of the adversary complaint, Plaintiff alleges that with respect  
12 to the assets described in paragraphs 29 and 30 of the adversary complaint, Defendant  
13 concealed, destroyed, or failed to keep or preserve recorded information from which her  
14 financial affairs might be ascertained. *Adversary Complaint* at 9, ¶ 40. Further, Plaintiff  
15 in paragraph 41 of her adversary complaint, alleges that at the 341(a) meeting of  
16 creditors, Defendant was instructed by the Chapter 7 Trustee to produce records  
17 regarding undisclosed preferential transfers and statements from her stock account.  
18 *Adversary Complaint* at 9, ¶ 41.

19 78. Upon review of the evidentiary record, with respect to Plaintiff's 11 U.S.C. §  
20 727(a)(3) cause of action, the court determines that the evidence does not show by a  
21 preponderance that Defendant concealed, destroyed, or failed to keep or preserve  
22 recorded information from which her financial affairs might be ascertained without  
23 justification under all of the circumstances of the case. Regarding the assets described  
24 in paragraphs 29 and 30 of the adversary complaint, the only relevant allegation for  
25 purposes of Plaintiff's 11 U.S.C. § 727(a)(3) claim is the allegation that Defendant  
26 donated the assets described therein but failed to keep the related records and receipts.  
27 That Defendant gave assets to a charitable organization, the Salvation Army, does not  
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1 necessarily indicate that she acted with an intent to hinder, delay or defraud creditors,  
2 and may indicate that she just had a charitable purpose in doing so. Such a transfer was  
3 not made to a related party or a nominee under Defendant's control which would support  
4 an inference of a bad purpose. That Defendant made a charitable donation to a third  
5 party, unrelated and well-known, large charitable organization like the Salvation Army  
6 without more does not show an intent to hinder, delay or defraud creditors. Defendant  
7 stated at her 341(a) meeting of creditors that she had a bipolar episode around the time  
8 she donated her sewing machine, diamonds or gemstones and that she donated the  
9 contents of her condominium to the Salvation Army when her condominium was being  
10 foreclosed, and these events plausibly explain her motivation for making the charitable  
11 donation and the gift of the sewing machine. *Transcript of 341(a) Meeting of Creditors,*  
12 *Plaintiff's Trial Exhibit P-6* at 6-8. Based on this record, the court finds that Plaintiff has  
13 not shown by a preponderance of the evidence that Defendant's failure to keep the  
14 related receipts from the Salvation Army is not justifiable.

15 79. Further, regarding records of Defendant's TD Waterhouse Account, because  
16 a number of the account statements were admitted as part of the evidentiary record  
17 through Plaintiff's trial exhibits, *Plaintiff's Trial Exhibits P-32 through P-43*, it cannot be  
18 said that Defendant failed to maintain or preserve such records since it appears that  
19 either Defendant had the records, which she produced, or that the records were available  
20 from TD Waterhouse itself.

21 80. Moreover, in her Proposed Findings of Fact and Conclusions of Law, Plaintiff  
22 contends that Defendant's discharge should be denied pursuant to 11 U.S.C. § 727(a)(3)  
23 because Defendant failed to produce certain documents in response to Plaintiff's  
24 requests for production of documents. ECF 51 at ¶ 19, 13-15. Nonetheless, the court  
25 has reviewed the evidentiary record and the evidence does not show that Defendant  
26 failed to produce such documents. The only evidence provided by Plaintiff in support of  
27 this allegation is *Plaintiff's Trial Exhibit P-8, Defendant's Responses to Plaintiffs Request*  
28

1 *for Production of Documents*. For each request, Defendant responded, "To the extent  
2 these documents are available, they will be produced." No further evidence was admitted  
3 regarding what documents were produced or not produced. Additionally, based on its  
4 review of the docket, the court notes that Plaintiff never filed any motion to compel  
5 Defendant to produce documents pertaining to such requests. Accordingly, the court  
6 determines that the evidence does not show that Defendant failed to produce the  
7 documents alleged in paragraph 19 of Plaintiff's Proposed Findings of Fact and  
8 Conclusions of Law.

9 81. Accordingly, the court finds that Plaintiff has not shown by a preponderance of  
10 the evidence that Defendant concealed, destroyed, or failed to keep or preserve recorded  
11 information from which her financial affairs might be ascertained without justification  
12 under all of the circumstances of the case in order to establish a claim under 11 U.S.C. §  
13 727(a)(3).

14 **Plaintiff's 11 U.S.C. § 727(a)(4) Claim**

15 82. In the adversary complaint, Plaintiff alleges that Defendant knowingly and  
16 fraudulently, in or in connection with this Chapter 7 bankruptcy case, made one or more  
17 false oaths. *Adversary Complaint* at 9, ¶¶ 42-45. In paragraph 45 of the adversary  
18 complaint, Plaintiff alleged the following:

19  
20 45. In her Schedules and SOFA, Defendant's knowing and fraudulent false  
oaths include, but are not limited to, the following:

21 a. On Defendant's schedule B(2), she claims to have \$500.00, in a  
22 TD Waterhouse account. However, in the Meeting of Creditors,  
23 Defendant admitted that the previous balance of the TD Waterhouse  
24 account was over \$300,000.00. When asked what she did with that  
25 money, she stated she "lost" it all. Again, Defendant's SOFA does  
not disclose any "other property . . . transferred either absolutely or  
as security within two years immediately preceding the  
commencement of this case."

26 83. The court has thoroughly reviewed the evidentiary record and the evidence  
27 does not show that Defendant knowingly or fraudulently made false oaths in connection  
28

1 with her bankruptcy case. Plaintiff has failed to identify specifically where Defendant  
2 made a false oath, which necessarily requires proof that a particular asset, liability or  
3 transfer should be disclosed on a particular part of Defendant's petition documents, or  
4 that Plaintiff made a false oath at a specific time such as at Defendant's 341(a) meeting  
5 of creditors. As to some of the assets referenced in paragraph 29a-i of the adversary  
6 complaint, in her Proposed Findings of Fact and Conclusions of Law, ECF 51, Plaintiff  
7 has failed to explain where such assets should have been disclosed. For example,  
8 regarding Plaintiff's claims in paragraph 45 of the adversary complaint, there is no  
9 evidence that the \$300,000 was transferred outside of the ordinary course of business  
10 such that it should be disclosed in paragraph 10 of Defendant's Statement of Financial  
11 Affairs.

12 84. Further, regarding Plaintiff's allegation that Defendant owned a camera that  
13 she did not list on her schedules, the court finds that Plaintiff has failed to prove such by  
14 a preponderance of the evidence. A comparison between Defendant's statements at her  
15 341(a) meeting of creditors, *Transcript of 341(a) Meeting of Creditors, Plaintiff's Trial*  
16 *Exhibit P-6* at 7, with her Schedule B, *Plaintiff's Trial Exhibit P-51* at 13, does not prove  
17 such because there are household goods and furnishings listed on Defendant's Schedule  
18 B with a value of \$2,000, as well as "sewing machines and supplies" listed in line 8,  
19 "Firearms and sports, photographic, and other hobby equipment", both of which could  
20 include the camera. Accordingly, Plaintiff has failed by a preponderance of the evidence  
21 to prove that a camera is not included therein.

22 85. Moreover, regarding the monthly payments Defendant made to her family  
23 members, it is not clear where such payments should be listed on Defendant's schedules  
24 and other petition documents as Plaintiff does not indicate specifically where such  
25 disclosures should have been made by Defendant. Even if Plaintiff meant that such  
26 payments should be listed on Defendant's Statement of Financial Affairs, it is not clear  
27 where such payments should be listed. For example, payments to family members, on  
28

1 their face, do not necessarily constitute payments to creditors for purposes of paragraph  
2 3 of the Statement of Financial Affairs, nor are such payments necessarily out of the  
3 ordinary course of her financial affairs for purposes of paragraph 10 of the Statement of  
4 Financial Affairs.

5 86. Accordingly, the court determines that Plaintiff has not shown by a  
6 preponderance of the evidence that Defendant knowingly and fraudulently, in or in  
7 connection with her Chapter 7 bankruptcy case, made one or more false oaths for  
8 purposes of 11 U.S.C. § 727(a)(4).

9 **Plaintiff's 11 U.S.C. § 727(a)(5) Claim**

10 87. In paragraph 49 of the adversary complaint, Plaintiff alleged that with respect  
11 to the assets discussed in paragraphs 29 and 30 of the adversary complaint, Defendant  
12 has failed to explain satisfactorily, before determination of denial of discharge, any loss of  
13 assets or deficiency of assets to meet her liabilities. Plaintiff further specifically alleged  
14 the following:

15  
16 49. By failing to provide Plaintiff with complete copies of all of her pre-  
17 petition and post-petition records concerning all the assets she lost or  
18 "donated" when she had a "bipolar episode," such as receipts, or accurately  
19 disclosing transfers made in her Schedules and/or SOFA, or providing  
truthful financial account statements and information, Defendant failed to  
explain satisfactory [sic] her alleged loss of significant assets or deficiency  
of assets to meet her liabilities.

20 88. First, as described below in the court's conclusions of law, the legal standard  
21 for a claim under 11 U.S.C. § 727(a)(5) does not require Defendant to provide records to  
22 Plaintiff, it requires proof that the bankruptcy pleadings or statement of financial affairs do  
23 not reflect an adequate explanation for the disposition or deficiency of the assets. See  
24 *Samson v. Retz (In re Retz)*, 606 F.3d 1189, 1205 (9<sup>th</sup> Cir. 2010). Nonetheless,  
25 regarding the assets discussed in paragraphs 2, 30 and 49 of the adversary complaint,  
26 as explained in more detail below, the evidence does not show that Defendant failed to  
27 satisfactorily explain the loss of the sewing machine, the diamonds, other contents in her  
28

1 condominium, the camera, or the payments to Pakistan, because the loss of such assets  
2 was explained on her schedules and amended statement of financial affairs. *Plaintiff's*  
3 *Trial Exhibit P-51* at 27 (listing support payments to family in Pakistan) and *Plaintiff's Trial*  
4 *Exhibit P-53* at 3 (listing transfers of sewing machine, jewelry, sofa, mirror, chair, and  
5 cabinet, including donations to the Salvation Army). Regarding the loss of her TD  
6 Waterhouse Account funds, Defendant disclosed the current account balance of her TD  
7 Waterhouse Account on Defendant's Schedule B, *Plaintiff's Trial Exhibit P-51* at 27, and  
8 Plaintiff has failed to provide evidence that the transfers from the account should have  
9 been disclosed elsewhere such as on Defendant's statement of financial affairs. For  
10 example, Plaintiff has not provided evidence that the transfers from the TD Waterhouse  
11 Account were made outside of the ordinary course of business such that they should  
12 have been listed on Defendant's Statement of Financial Affairs at paragraph 10.  
13 Accordingly, the court finds that the preponderance of the evidence does not show that  
14 Defendant's bankruptcy pleadings or statement of financial affairs do not adequately  
15 explain the disposition or deficiency of the previously discussed assets.

### 16 **CONCLUSIONS OF LAW**

#### 17 **Plaintiff's 11 U.S.C. § 523(a)(6) Claim**

18 1. Under 11 U.S.C. § 523(a)(6), a debt for willful and malicious injury by an  
19 Individual debtor to another or to property of another is excepted from discharge. An  
20 injury is "willful" "when it is shown that either the debtor had a subjective motive to inflict  
21 injury or that the debtor believed that injury was substantially certain to occur as a result  
22 of his conduct." *Petralia v. Jercich (In re Jercich)*, 238 F.3d 1202, 1208 (9<sup>th</sup> Cir. 2001).  
23 "Willful" intent does not require that the debtor have had the specific intent to injure the  
24 creditor, if the act was intentional and the debtor knew that it would necessarily cause  
25 injury. *Id.* at 1207. "Willful" means "voluntary" or "intentional," *Kawaahau v. Geiger*, 523  
26 U.S. 56, 61 n. 3 (1998), and so recklessness or negligence is insufficient; the debtor must  
27 not only have *acted* willfully, but also *inflicted the injury* willfully. 523 U.S. at 61-62, *citing*  
28



1 Restatement (Second) of Torts, § 8A, comment A (1964). The standard focuses on the  
2 debtor's subjective intent, and not "whether an objective, reasonable person would have  
3 known that the actions in question were substantially certain to injure the creditor."

4 *Carrillo v. Su (In re Su)*, 290 F.3d 1140, 1145-1146 (9<sup>th</sup> Cir. 2002) (citations omitted).

5 2. The "malicious" injury requirement under 11 U.S.C. § 523(a)(6) is separate  
6 From the "willful" requirement. *In re Su*, 290 F.3d at 1146. An injury is "malicious" if it  
7 involves "(1) a wrongful act, (2) done intentionally, (3) which necessarily causes injury,  
8 and (4) is done without just cause or excuse." *In re Jercich*, 238 F.3d at 1209, *citing*,  
9 *Kawaahau v. Geiger, supra*. This definition "does *not* require a showing of biblical  
10 malice, i.e., personal hatred, spite, or ill-will." *Murray v. Bammer (In re Bammer)*, 131  
11 F.3d 788, 791 (9<sup>th</sup> Cir. 1997) (emphasis in original; citations omitted). The intent required  
12 is the intent to do the act at issue, not the intent to injure the victim. *Id.*

13 3. Although not specifically raised as an issue of law in the Amended Pre-Trial  
14 Stipulation, ECF 36, which was approved by an order of the court, ECF 38, Plaintiff now  
15 argues in her trial brief that the court should apply collateral estoppel or issue preclusion  
16 effect to the state court judgment, which awarded Plaintiff \$602,500 against Defendant.  
17 ECF 46 at 17-19. This court may give issue preclusion effect to a state court judgment  
18 as the basis for excepting a debt from discharge. *Harmon v. Kobrin (In re Harmon)*, 250  
19 F.3d 1240, 1245 (9<sup>th</sup> Cir. 2001), *cited in Tomkow v. Barton (In re Tomkow)*, \_\_\_ B.R. \_\_\_,  
20 2017 WL 65351, slip op. at \*4 (9<sup>th</sup> Cir. BAP 2017); *see also, Grogan v. Garner*, 498 U.S.  
21 279, 284 n.11 (1991); *Younie v. Gonya (In re Younie)*, 211 B.R. 367, 373 (9<sup>th</sup> Cir. BAP  
22 1997). Plaintiff as the party asserting issue preclusion has the burden of establishing the  
23 threshold requirements. *In re Harmon*, 250 F.3d at 1240, *cited in, In re Tomkow*, \_\_\_ B.R.  
24 at \_\_\_, 2017 WL 65351, slip op. at \*4. "This means providing 'a record sufficient to  
25 reveal the controlling facts and pinpoint the exact issues litigated in the prior action.'"  
26 *Kelly v. Okoye (In re Kelly)*, 182 B.R. 255, 258 (9<sup>th</sup> Cir. BAP 1995), *aff'd*, 100 F.3d 110  
27 (9<sup>th</sup> Cir. 1996), *cited in, In re Tomkow*, \_\_\_ B.R. at \_\_\_, 2017 WL 65351, slip op. at \*4.

1 “Ultimately, ‘[a]ny reasonable doubt as to what was decided by a prior judgment should  
2 be resolved against allowing the [issue preclusive] effect.’” *Id.* “In determining the  
3 collateral estoppel effect of a state court judgment, federal courts must, as a matter of full  
4 faith and credit, apply that state’s law of collateral estoppel.” *Bugna v. McArthur (In re*  
5 *Bugna)*, 33 F.3d 1054, 1057 (9<sup>th</sup> Cir. 1994) (citations omitted).

6 4. The subject state court judgment was a default judgment entered by a California  
7 state court, and thus, it is appropriate to apply California law of issue of preclusion.  
8 “California permits application of issue preclusion to an existing judgment: (1) after final  
9 adjudication; (2) of an identical issue; (3) actually litigated in the former proceeding; (4)  
10 necessarily decided in the former proceeding; and (5) asserted against a party in the  
11 former proceeding or someone in privity with a party. *In re Tomkow*, \_\_ B.R. at \_\_\_,  
12 2017 WL 65351, slip op. at \*4, *citing, DKN Holdings LLC v. Faerber*, 61 Cal.4<sup>th</sup> 813, 825  
13 (2015); *see also, In re Kelly*, 182 B.R. at 258.

14 5. Issue preclusion, or collateral estoppel, may only be applied to a default  
15 judgment under California law only to the extent that “the defendant had actual notice of  
16 the proceedings and a ‘full and fair opportunity to litigate’,” and “‘*only where the record*  
17 *shows an express finding upon the allegation’ for which preclusion is sought.”* *Cal-Micro,*  
18 *Inc. v. Cantrell (In re Cantrell)*, 329 F.3d 1119, 1124 (9<sup>th</sup> Cir. 2003) (emphasis added),  
19 *citing and quoting, In re Harmon*, 250 F.3d at 1247 and n. 6 and *Williams v. Williams (In*  
20 *re Williams’ Estate)*, 36 Cal.2<sup>nd</sup> 289, 223 P.2d 248, 254 (1950). “[T]he express finding  
21 requirement can be waived if the court in the prior proceeding necessarily decided the  
22 issue.” *In re Cantrell*, 329 F.3d at 1124, *quoting, In re Harmon*, 250 F.3d at 1248.

23 6. Although the state court entered a default judgment in favor of Plaintiff and  
24 against Defendant, *Plaintiff’s Trial Exhibit P-3*, because the state court in its default  
25 judgment did not make any express findings, and because the default judgment of the  
26 state court was based upon a complaint that pleaded multiple causes of action for  
27 professional negligence, breach of fiduciary duty, and intentional interference of emotional  
28

1 distress, *Plaintiff's Trial Exhibit P-2*, which in the absence of express findings means the  
2 state court did not necessarily decide issues of willful and maliciousness since the  
3 judgment could have been based upon any one of the causes of action, including for  
4 professional negligence, which does not require a finding of intent necessary to claim for  
5 willful and malicious injury under 11 U.S.C. § 523(a)(6), the court determines that it  
6 cannot give issue preclusive effect to the state court judgment for purposes of Plaintiff's  
7 claim under 11 U.S.C. § 523(a)(6). See 6 Witkin, *Summary of California Law, Torts*,  
8 *Elements of Actionable Negligence*, § 835 at 52-53 (2005 and 2016 Supp.), *citing inter*  
9 *alia, Artiglio v. Corning*, 18 Cal.4<sup>th</sup> 604, 614 (1998).

10 7. Further, as discussed above in the court's findings of fact, regarding the various  
11 allegations relating to Plaintiff's claim under 11 U.S.C. § 523(a)(6) as set forth in  
12 paragraphs 18-23 and 34 of the adversary complaint, the court's findings of fact are  
13 limited to the following: Defendant worked for Plaintiff in an administrative or personal  
14 capacity, *Finding of Fact 43, supra*; Defendant entered into a lease agreement whereby  
15 Defendant's business was listed as the owner on the lease and Plaintiff was listed as a  
16 resident, *Finding of Fact 46, supra*; and Defendant requested that Plaintiff get \$20,000  
17 from Plaintiff's boyfriend, but that Plaintiff did not agree to this, *Finding of Fact 49, supra*.  
18 While such acts may have been atypical in a psychiatrist-patient relationship and were at  
19 least negligent dereliction of duty by Defendant as a psychiatrist to Plaintiff as her patient  
20 as determined in the state court judgment, the court determines that Plaintiff has failed to  
21 prove by a preponderance of the evidence that such acts by themselves were done by  
22 Defendant with a subjective motive to inflict injury to Plaintiff, that Defendant believed that  
23 injury to Plaintiff was substantially certain to occur as a result, that such acts were  
24 wrongful, and that such acts necessarily caused injury to Plaintiff without just cause or  
25 excuse. Accordingly, the court determines that Plaintiff is not entitled to relief on her  
26 claim under 11 U.S.C. § 523(a)(6).

27 ///

**Plaintiff's 11 U.S.C. § 727(a)(2) Claim**

8. Under 11 U.S.C. § 727,

[t]he court shall grant the debtor a discharge, unless . . . the debtor, with intent to hinder, delay, or defraud a creditor or an officer of the estate charged with custody of property under this title, has transferred, removed, destroyed, mutilated, or concealed, or has permitted to be transferred, removed, destroyed, mutilated, or concealed[,] (A) property of the debtor, within one year before the date of the filing of the petition; or (B) property of the estate, after the date of the filing of the petition.

11 U.S.C. § 727(a)(2).

9. A party seeking denial of discharge under 11 U.S.C. § 727(a)(2) must prove two things: “(1) a disposition of property, such as transfer or concealment, and (2) a subjective intent on the debtor's part to hinder, delay or defraud a creditor through the act [of] disposing of the property.” *Hughes v. Lawson (In re Lawson)*, 122 F.3d 1237, 1240 (9<sup>th</sup> Cir. 1997); *accord, In re Retz*, 606 F.3d at 1200. Under 11 U.S.C. § 101(54), “The term ‘transfer’ means . . . (D) each mode, direct or indirect, absolute or conditional, voluntary or involuntary, of disposing of or parting with— (i) property; or (ii) an interest in property.” “Those objecting to discharge ‘bear [ ] the burden of proving by a preponderance of the evidence that [the debtor’s] discharge should be denied.” *In re Retz*, 606 F.3d at 1196, *quoting, Khalil v. Developers Surety & Indemnity Co. (In re Khalil)*, 379 B.R. 163, 172 (9<sup>th</sup> Cir. BAP 2007), *affirmed*, 578 F.3d 1167, 1168 (9<sup>th</sup> Cir. 2009); *see also, Beverly v. Beverly (In re Beverly)*, 374 B.R. 221, 243 (9<sup>th</sup> Cir. BAP 2007) (“The burden of proof on an objection to discharge under § 727(a)(2) is preponderance of the evidence.”), *affirmed in part and appeal dismissed in part*, 551 F.3d 1092 (9<sup>th</sup> Cir. 2008), *citing inter alia, Grogan v. Garner*, 498 U.S. 279, 289 (1991).

10. “In keeping with the ‘fresh start’ purposes behind the Bankruptcy Code, courts should construe § 727 liberally in favor of debtors and strictly against parties objecting to discharge.” *In re Retz*, 606 F.3d at 1196, *quoting, Bernard v. Sheaffer (In re Bernard)*, 96 F.3d 1279, 1281 (9<sup>th</sup> Cir. 1996). While “[t]his does not alter the burden on the objector,

1 [it] rather means that ‘actual, rather than constructive intent is required’ on the part of  
2 debtor.” *In re Retz*, 606 F.3d at 1196, *quoting*, *In re Khalil*, 379 B.R. at 172.

3 11. As discussed above in the court’s findings of fact, the court determines that  
4 Plaintiff has not shown by a preponderance of the evidence that Defendant transferred  
5 the sewing machine, diamonds, and the other contents of her condominium within one  
6 year of the filing of her bankruptcy petition as required under 11 U.S.C. § 727(a)(2)(A).  
7 Moreover, regarding these assets as well as the support payments to her family and the  
8 transfer of funds in her TD Waterhouse Account, the court determines that Plaintiff has  
9 not shown by a preponderance of the evidence that Defendant made these transfers with  
10 the intent to hinder, delay or defraud Plaintiff as required by 11 U.S.C. § 727(a)(2).  
11 Accordingly, the court determines that Plaintiff has failed to prove by a preponderance of  
12 the evidence that Defendant, with the intent to hinder, delay or defraud Plaintiff,  
13 transferred or concealed property of the estate within one year of the petition date, and  
14 that Plaintiff is not be entitled to relief on her claim under 11 U.S.C. § 727(a)(2).

15 **Plaintiff’s 11 U.S.C. § 727(a)(3) Claim**

16 12. Under 11 U.S.C. § 727(a)(3), the court shall grant the debtor a discharge,  
17 unless “the debtor has concealed, destroyed, mutilated, falsified, or failed to keep or  
18 preserve any recorded information, including books, documents, records, and papers,  
19 from which the debtor’s financial condition or business transactions might be ascertained,  
20 unless such act or failure to act was justified under all the circumstances of the case.” “In  
21 order to state a prima facie case under Section 727(a)(3), a creditor objecting to  
22 discharge must show (1) that the debtor failed to maintain and preserve adequate  
23 records, and (2) that such failure makes it impossible to ascertain the debtor’s financial  
24 condition and material business transaction.” *Lansdowne v. Cox (In re Cox)*, 41 F.3d  
25 1294, 1296 (9<sup>th</sup> Cir. 1994), *citing Meridian Bank v. Alten*, 958 F.2d 1226, 1232 (3<sup>rd</sup> Cir.  
26 1992). “Once the objecting party shows that the debtor’s records are absent or are  
27 inadequate, the burden of proof then shifts to the debtor to justify the inadequacy or  
28

1 nonexistence of the records.” *Id.*, citing *inter alia*, *Meridian Bank v. Alten*, 958 F.2d at  
2 1233.

3 13. As discussed above in the court’s findings of fact, because the court finds that  
4 Plaintiff has not shown by a preponderance of the evidence that Defendant’s failure to  
5 keep records of her Salvation Army donations was not justifiable, the court determines  
6 that as to the charitable donations of the sewing machine, diamonds, and other contents  
7 of her condominium to the Salvation Army, Plaintiff has failed to prove by a  
8 preponderance of the evidence that she is entitled to relief on her claim under 11 U.S.C.  
9 § 727(a)(3). Regarding disclosure of her TD Waterhouse Account, because Plaintiff has  
10 failed to prove by a preponderance of the evidence that Defendant failed to disclose such  
11 statements, the court determines that Plaintiff is not entitled to relief under 11 U.S.C. §  
12 727(a)(3). Furthermore, regarding Defendant’s alleged failure to produce certain  
13 documents through discovery, because Plaintiff has failed to prove by a preponderance  
14 of the evidence that Defendant failed to produce such, the court determines that Plaintiff  
15 is not entitled to relief on her claim under 11 U.S.C. § 727(a)(3). Therefore, the court  
16 determines that Plaintiff should not be entitled to relief on her claim under 11 U.S.C. §  
17 727(a)(3).

18 **Plaintiff’s 11 U.S.C. § 727(a)(4) Claim**

19 14. Under 11 U.S.C. § 727(a)(4), the court shall grant the debtor a discharge  
20 unless, “(4) the debtor knowingly and fraudulently, in or in connection with the case—(A)  
21 made a false oath or account.” To prevail on an 11 U.S.C. § 727(a)(4) claim, Plaintiff  
22 has the burden to prove, by a preponderance of the evidence, that, “(1) the debtor made  
23 a false oath in connection with the case; (2) the oath related to a material fact; (3) the  
24 oath was made knowingly; and (4) the oath was made fraudulently.” *In re Retz*, 606 F.3d  
25 at 1197, citing, *In re Roberts*, 331 B.R. 876, 882 (9<sup>th</sup> Cir. BAP 2005).

26 15. As discussed above in the court’s findings of fact, because the court finds that  
27 Plaintiff has failed to prove by a preponderance of the evidence that Defendant knowingly  
28

1 and fraudulently made a false oath in connection with her bankruptcy case that relates to  
2 a material fact, the court determines that Plaintiff is not entitled to relief under 11 U.S.C. §  
3 727(a)(4).

4 **Plaintiff's 11 U.S.C. § 727(a)(5) Claim**

5 16. 11 U.S.C. § 727(a)(5) provides that the court shall grant the debtor a  
6 discharge, unless "the debtor has failed to explain satisfactorily, before determination of  
7 denial of discharge under this paragraph, any loss of assets or deficiency of assets to  
8 meet the debtor's liabilities." Under 11 U.S.C. § 727(a)(5), the creditor objecting to  
9 discharge must show (1) the debtor at one time, not too remote from the bankruptcy  
10 petition date, owned identifiable assets; (2) on the date the bankruptcy petition was filed  
11 or order of relief granted, the debtor no longer owned the assets or the assets were  
12 deficient to meet the debtor's liabilities; and (3) the bankruptcy pleadings or statement of  
13 affairs do not reflect an adequate explanation for the disposition or deficiency of the  
14 assets. See *In re Retz*, 606 F.3d at 1205 (citation omitted). "Once the creditor has made  
15 a prima facie case, the debtor must offer credible evidence regarding the [deficiency of  
16 or] disposition of the missing assets." See *id.*, 606 F.3d at 1189 (citation omitted).

17 17. As discussed above in the court's findings of fact, because the court finds that  
18 the preponderance of the evidence does not show that Defendant's bankruptcy pleadings  
19 or statement of financial affairs do not adequately explain the disposition or deficiency of  
20 the previously discussed assets, the court determines that Plaintiff has failed to prove her  
21 11 U.S.C. § 727(a)(5) claim by a preponderance of the evidence. Accordingly, the court  
22 determines that Plaintiff is not entitled to relief under 11 U.S.C. § 727(a)(5).

23 **CONCLUSION**

24 For the foregoing reasons, the court determines that Plaintiff's claims under 11  
25 U.S.C. § 523(a)(6), and 11 U.S.C. § 727(a)(2), (a)(3), (a)(4) and (a)(5) should be denied.  
26 This memorandum decision constitutes the court's findings of fact and conclusions of law  
27  
28

1 pursuant to Rule 7052 of the Federal Rules of Bankruptcy Procedure and Rule 52 of the  
2 Federal Rules of Civil Procedure. A separate judgment is being entered concurrently.

3 By separate order, the court grants Plaintiff's motion to strike Defendant's  
4 objections to Plaintiff's proposed findings of fact and conclusions of law and Defendant's  
5 counter-proposed findings of fact and conclusions of law since Defendant's objections to  
6 Plaintiff's proposed findings of fact and conclusions of law were untimely filed and  
7 Defendant's counter-proposed findings of fact and conclusions of law were untimely  
8 lodged in violation of the court's post-trial scheduling order requiring such documents be  
9 submitted (i.e., any objections to Plaintiff's proposed findings of fact and conclusions of  
10 law be filed) no later than June 30, 2016.

11 IT IS SO ORDERED.

12 ###

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21  
22  
23 Date: March 3, 2017



24 Robert Kwan  
25 United States Bankruptcy Judge  
26  
27  
28